

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Falcon Cablevision	)	
D/B/A Charter Communications	)	File Number EB-03-KC-020
Operator of Cable System	)	
in	)	NAL/Acct. No.200332560017
Osage Beach, Missouri	)	
	)	FRN 0001-5308-72
St. Louis, Missouri	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released:** May 9, 2003

By the Enforcement Bureau, Kansas City Office:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Falcon Cablevision D/B/A Charter Communications (“Charter”), operator of the cable television system serving Osage Beach, Missouri, willfully and repeatedly violated Section 11.61(a)(1) of the Commission’s Rules (“Rules”)<sup>1</sup> by failing to conduct required monthly tests of the Emergency Alert System (“EAS”). We conclude that Charter is apparently liable for a forfeiture in the amount of two thousand dollars (\$2,000).

**II. BACKGROUND**

2. On January 30, 2003, an agent of the Commission’s Kansas City Field Office inspected Charter’s cable system located at 5151 Highway 54, Suite B, Osage Beach, Missouri, to verify compliance with the Commission’s EAS requirements. Charter’s EAS receiver was improperly set, rendering it incapable of receiving monthly EAS tests. Charter’s EAS records for the period April 26, 2002, to January 30, 2003, contained no entries showing that Charter had received and/or retransmitted monthly EAS tests, no entries explaining failure to receive and conduct the tests, and no entries showing the EAS equipment had been removed from service for repair. Charter’s Head End Technician, Ken Haertling, stated that Charter had only been receiving and transmitting weekly EAS tests, but not monthly tests.

3. On February 4, 2003, the Commission agent spoke by telephone to Charter’s Paul Hartung who stated that Charter’s Osage Beach system EAS equipment had been programmed with the proper settings and could now receive the monthly tests.

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<sup>1</sup> 47 C.F.R. § 11.61(a)(1).

### III. DISCUSSION

4. Section 11.61(a)(1) of the Rules requires cable systems to conduct monthly tests of the EAS header codes, Attention Signal, Test Script and End of Message Codes. From at least April 26, 2002 to January 30, 2003, Charter's cable system in Osage Beach, Missouri, failed to conduct the monthly EAS tests. Charter's logs showed no evidence of receipt or retransmission of any of the required monthly EAS tests, no entries explaining the failure to receive and conduct such tests, and no entries showing EAS equipment had been removed from service for repair.<sup>2</sup>

5. Based on the evidence before us, we find that from at least April 26, 2002 to January 30, 2003, Charter willfully<sup>3</sup> and repeatedly<sup>4</sup> violated Section 11.61(a)(1) of the Rules by failing to conduct the required monthly EAS tests.

6. Pursuant to Section 1.80(b)(4) of the Rules,<sup>5</sup> the base forfeiture amount for failure to conduct required EAS tests (i.e., failure to make required measurements or conduct required monitoring) is \$2,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>6</sup> Considering the entire record and applying the factors listed above, this case warrants a \$2,000 forfeiture.

### IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>7</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>8</sup> Falcon Cablevision D/B/A Charter Communications is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of two thousand dollars (\$2,000) for willful and repeated violation of Section 11.61(a)(1) of the Rules by failing to conduct required monthly EAS tests.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules,

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<sup>2</sup> EAS tests and activations, failure to receive such tests and activations, and EAS equipment malfunctions must be recorded in the station log. See 47 C.F.R. §§ 11.35(a)-(b), 11.54(b)(12), 11.55(c)(7) and 11.61(b).

<sup>3</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies equally to Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>4</sup> The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

47 U.S.C. § 312(f)(2).

<sup>5</sup> 47 C.F.R. § 1.80(b)(4)

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Falcon Cablevision D/B/A Charter Communications SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>9</sup>

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. and FRN referenced above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

13. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by regular mail and Certified Mail Return Receipt Requested to Falcon Cablevision D/B/A Charter Communications, 12405 Powerscourt Drive, St. Louis, Missouri 63131.

FEDERAL COMMUNICATIONS COMMISSION

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<sup>9</sup> See 47 C.F.R. § 1.1914.

Robert C. McKinney  
District Director, Kansas City Office  
Enforcement Bureau

Attachment